BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----------In the Matter of----------)	Docket No. 2008-0273
)	
PUBLIC UTILITIES COMMISSION)	
)	
Instituting a Proceeding to)	
Investigate the Implementation of)	
Feed-in Tariffs.)	
)	

AES SOLAR POWER, LLC
COMMENTS ON THE HAWAIIAN ELECTRIC COMPANIES' SCHEDULE FIT TIER 3 TARIFFS AND AGREEMENT

DECLARATION OF CORINNE ONETTO

AND

CERTIFICATE OF SERVICE

Corinne Onetto
Project Development Manager
The AES Corporation
4300 Wilson Boulevard
11th Floor
Arlington, VA 22203
Ph: (703) 485-7901
corinne.onetto@AES.com

On behalf of:
AES Solar Power, LLC
901 N. Stuart Street
Suite 810
Arlington, VA 22203

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AES SOLAR POWER, LLC
COMMENTS ON THE HAWAIIAN ELECTRIC COMPANIES' SCHEDULE FIT TIER 3 TARIFFS AND AGREEMENT

AES Solar Power, LLC. ("AES Solar") hereby submits its comments on the proposed Schedule Feed-In Tariffs ("FIT") Tier 3 and the standard Schedule FIT Tier 3 Power Purchase Agreement filed in the captioned docket by Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited (each, a "Company" and collectively, the "Companies").

I. BACKGROUND

A. About AES

AES Solar is a joint venture of The AES Corporation (AES) and Riverstone Holdings LLC. AES is a U.S. corporation and one of the world's leading power companies. The company owns or controls 132 generating facilities and 14 distribution companies in 29 countries. The generation facilities have over 40,000 MW of capacity, and the distribution companies serve approximately 11 million customers.

Riverstone, an energy and power-focused private equity firm founded in 2000, has approximately $17 billion under management across six investment funds. Riverstone conducts buyout and growth capital investments in the midstream, exploration & production, oilfield services, power and renewable sectors of the energy industry. With offices in New York, London and Houston, the firm has committed approximately $11.1 billion to 58 investments in North America, Latin America, Europe and Asia.

AES Solar, or one or more of its affiliates, anticipates that it may be seeking to develop solar or other renewable energy facilities in Hawaii and may seek to enter into a FIT Agreement with one or more of the Companies. Therefore, AES Solar has an interest in this proceeding.

B. Proceeding

By an October 24, 2008 Order Initiating Investigation, the Commission opened the captioned docket to examine the implementation of FIT in the Companies' service territories. On September 25, 2009, the Commission issued its decision and order setting forth the general principles for the design and implementation of the FIT program for the Companies. On April 29, 2010, the Companies filed their proposed Schedule FIT Tier 3 tariff sheets and standard Schedule FIT Tier 3 Power Purchase Agreement ("Standard PPA"). AES Solar's comments on the Companies' proposal are provided below.

II. COMMENTS

The comments set forth below are intended to resolve certain ambiguities in the Companies' proposal and to ensure that the Sellers' interests under the Standard PPA are adequately protected. It is particularly important to correct problems with the Standard PPA since the parties' ability to negotiate changes to it will be constrained by the

requirement to file it with the Commission if changes are made (other than the limited changes for which no such filing is required). In addition, AES Solar notes that Sellers may be seeking outside financing for the projects seeking to participate in the FIT program, and AES Solar has included comments that are intended to address issues that likely would be raised by financing parties.

A. Schedule FIT Tier 3 Tariff Sheets[1]

1. The provisions in Section B(1)(b) limiting the size of eligible Tier 3 facilities refer in several places to system peak load. AES Solar suggests that language be added indicating that the basis for the system peak load is peak load for the appropriate Company's entire system during the prior calendar year (see the cover letter to the Companies' April 29, 2010 filing in the captioned docket ("Cover Letter") at p. 5) and indicate the source of this information so that applicants can determine with certainty the applicable limitation before they submit an application to participate in the Schedule FIT Tier 3 program.

2. Section B(1)(3) provides that an existing generating facility selling electric energy to the Company under a power purchase agreement or with an existing standard interconnection agreement with the Company is not eligible to participate in the Schedule FIT Tier 3 program. AES Solar suggests that this section be clarified to indicate that facilities participating in the Net Energy Metering Program ("NEM Program") may switch to the FIT program. Moreover, AES Solar suggests removing the limitation with respect to existing standard interconnection agreements. If a facility is subject to an existing interconnection agreement but is not yet subject to a power purchase agreement

[1] Unless otherwise noted, these comments apply to the separate tariff sheets of all three Companies and capitalized terms used below have the meaning set forth in the applicable Schedule FIT Tier 3 Tariff Sheet or the standard Schedule FIT Tier 3 Power Purchase Agreement.

with the Company, it should be a prime candidate for participation in the FIT program, because its ability to interconnect will have been established.

3. The provision in Section M regarding Participation in other Company Programs appears to be duplicative of the provision in Sections B(2) and B(4) regarding having no more than one facility of the same technology type contracted under the Schedule FIT at the same address and requiring separate metering for facilities at the same site that are participating in the NEM Program. Moreover, whereas the provision in Schedule M appears to be intended to apply to facilities installed at the same site (see Cover Letter at p. 40), it is not specifically limited to facilities installed at the same site. Accordingly, AES Solar recommends that the provisions in Section M be consolidated as appropriate with the provisions in Sections B(2) and B(4) and clarified to apply only to facilities installed at the same site. There should be no limitation on the same company owning facilities at separate sites that participate in various programs, such as the FIT program and the NEM Program.

4. The limitation in Section B(5) on sales to third parties should have exceptions for any circumstances in which the Company breaches its obligation to purchase the energy (including test energy) from the Facility, curtails deliveries from the Facility or otherwise does not take all of the energy from the Facility. Similarly, the limitation in that Section on renegotiating with the Company for any changes to the Standard PPA should be changed to provide that the Seller may renegotiate with the Company for such changes subject to the requirement to obtain approval from the Commission for any substantive changes to it. This is important to provide for possible

future changes in energy markets or technology or any future changes in law that may affect either party's ability to perform under the Standard PPA.

5. Section D specifies that the Facility must be designed to interconnect and operate in parallel with the Company's system without causing adverse effects or safety hazards and in compliance with applicable standards. AES Solar seeks clarification that the Standard PPA will fully provide for interconnection of the applicable Facility and that no additional interconnection agreement will be required for any facility entering into a Standard PPA.

6. Section L(2) requires that the Seller submit a reservation fee in the amount of $15/kW within five business days after submission of an application for service, which will be refunded if the Guaranteed In-Service Date is met. AES Solar suggests adding that the reservation fee also will be refunded if for any reason a Standard PPA is not entered into (including, among other reasons, because of a lack of necessary transmission capacity to support interconnection of the Facility or a finding in the Interconnection Requirements Study that very large costs would be required to support the interconnection).

B. Standard Schedule FIT Tier 3 Power Purchase Agreement

1. The definition of "Annual Contract Energy" is a fixed amount to be specified by Seller as its estimate of expected annual average electrical energy deliveries. Because the capacity of some facilities may degrade over time, the Seller should have the option of specifying different amounts (e.g., in an Attachment to the Standard PPA) for different years or specifying a degradation factor.

2. The definition of Environmental Credits should be amended to specify certain types of payments (in addition to tax credits) that are not included in the definition. Specifically, the word "tax credits" at the end of this definition should be replaced by the following: "(i) any energy, capacity, reliability or other power attributes from the Facility; (ii) any state and federal production tax credits, investment tax credits and any other tax credits which are or will be generated by the Facility, or (iii) any cash payments or outright grants of money relating to the ownership, development, construction, expansion, operation, maintenance or financing of the Facility." This language is typical for power purchase agreements and is important to clarify that any grants received by Seller shall not be considered to be Environmental Credits. For example, a Seller might receive a grant in lieu of the federal investment tax credit, and this should not be considered to be an Environmental Credit that would be transferred to the Company.

3. The definition of Financing Documents is not currently used in the Standard PPA. However, if this definition is used, it should be expanded to include equity financing agreements (in addition to debt and lease financing agreements). Equity financing is often used in renewable energy projects because of the availability of tax credits and associated requirements of the Internal Revenue Service.

4. The definition of In-Service Date requires that all generating equipment be completed. It is possible that a Facility could be substantially complete but the Seller may experience some problems with a minor portion of its generating equipment. Accordingly, the definition should be changed to require that the substantial majority (e.g., 90 percent) of the generating equipment be completed. Without this change, the

Seller bears the risk that the Standard PPA could be terminated due to a relatively minor technical, permitting or other problem with completion of the Facility. Such a risk may impair the ability of the Seller to obtain outside financing.

5. The definition of Losses includes indirect and consequential damages. AES Solar recommends that the definition be limited only to direct damages and specifically exclude indirect and consequential damages. Such a limitation is common in power purchase agreements. It may be appropriate, however, in certain circumstances to allow for the pass-through to an indemnifying party of indirect and consequential damages to the extent that an indemnified party is subject to such damages. This may be the case, in particular, for indemnified personal injury, death or property damage claims. To address this, the indemnity provisions in Sections 17.1(A) and 17.2(A) could be amended to provide for such pass-through of indirect and consequential damages.

6. Sections 2.7 and 2.9 provide that a party may object to an invoice or an adjustment to an invoice but do not specify the process is for resolving such objections. AES Solar suggests that the Standard PPA be amended to specify that the dispute resolution mechanism in Article 28 is to be used for any such objections.

7. Article 8 provides for curtailment in limited circumstances, and Attachment B, Sections 2(F)(ii) and (iv), specify that FIT facilities shall be grouped together in one or more blocks where each block consists of all curtailable facilities that applied for the Schedule FIT in the same Schedule FIT release phase. However, it is not clear how curtailment will be applied among facilities within the same group. AES Solar suggests that the Standard PPA include language clarifying that curtailment be applied pro rata to all facilities with the same priority date.

8. Article 12 sets forth the term of the Standard PPA and certain rights of the parties to terminate it. However, it is not clear what happens if the Standard PPA is terminated or if the Company decides not to exercise its rights to purchase the output from the Facility during an Extended Term. Accordingly, the Standard PPA should be amended to include provisions specifying that the Seller may sell to any other person after the expiration or termination of the Standard PPA and that the interconnection provisions contained in the Standard PPA survive such expiration or termination. These clarifications are important to ensure that the Facility is not stranded in the event of a termination of the Standard PPA. These changes will reduce Seller's risks and facilitate obtaining outside financing.

9. Section 12.3 specifies that either party may terminate the Standard PPA for an Event of Default by the other party. This language should be clarified by adding a reference to applicable cure/grace periods.

10. Section 13.3 sets forth the grace periods for Seller's achievement of the Guaranteed In-Service Date. This section should be amended to provide for a day-for-day extension of the Guaranteed In-Service to the extent that any delay in achieving this date is attributable to any action or inaction by the Company. This is important because Seller will be dependent on the Company for certain actions necessary in order to achieve the Guaranteed In-Service Date, such as for interconnection of the Facility, and Seller should not be penalized for any delays caused by the Company.

11. Article 14 requires that the Reservation Fee be posted by Seller in cash and that the Operating Period Security be posted by Seller in the form of cash or a letter of credit. AES Solar suggests that a letter of credit could be posted for the Reservation

Fee as well as the Operating Period Security. If the Operating Period Security is drawn upon, Seller is required to replenish within 15 days. The requirement for replenishment is unduly burdensome, particularly in light of the fact that the value to the Company will decline as the Term of the contract progresses, as described further below. Accordingly, at a minimum the replenishment obligation should be deleted. Moreover, if, as discussed below, the liquidated damages to be paid by Seller in the event of a termination due to an event of Seller default are reduced over time, the amount of the Operating Period Security should be reduced by a corresponding amount. AES Solar also notes that there is no provision for security to be posted by the Company. AES recommends that the Company be required to post security in the same amount and form as the Operating Period Security within ten (10) days after any downgrade of the Company's issuer credit rating (or if an issuer rating is not available, its rating for long-term corporate debt) below an investment grade rating by either S&P or Moody's. If at any time the Company does not have an issuer or long term debt credit rating from at least one of S&P or Moody's, or if any such rating is downgraded below investment grade by either S&P or Moody's, then the Company would be required either to provide security in the same amount and form as the Operating Period Security or to provide a parent guarantee from a guarantor meeting the same creditworthiness requirements (subject to the requirement to post cash or a letter of credit in the amount of the Operating Period Security if the guarantor's credit rating is downgraded as described above).

12. Section 15.1 includes as a Seller Event of Default failure by Seller to provide electric energy to the company for a period of 365 or more consecutive days (unless such failure is caused by the inability of the Company to accept such electric

energy) or failure by Seller to deliver at least 60 percent of Annual Contract Energy for a period of 3 consecutive contract years. Section 21.5 provides that the liability for Termination Damages shall be deferred during an event or condition of Force Majeure (but for no more than 365 days). This could be interpreted to mean that the Standard PPA would be terminated if an Event of Default occurs due to an event or condition of Force Majeure but that payment of the Termination Damages would be deferred. Section 21.5 should be clarified to specify that to the extent one of the conditions set forth in Article 15 as an Event of Default is caused by an event or condition of Force Majeure, then it shall not be an Event of Default. This would make it clear that the Standard PPA would not terminate, and no Termination Damages would be due as a result of an event or condition of Force Majeure.

13. Section 15.1(B) should be amended to add that Seller's failure to provide energy to the Company during any consecutive 365-day period is excused not only by the Company's inability to accept such energy but also by the Company's breach of its obligations under the Standard PPA, curtailment by the Company, and any event or condition of Force Majeure. Similarly, Section 15.1(C) should specify that the calculation of whether Seller has delivered 60 percent of the Annual Contract Energy shall count as delivered energy any energy not delivered due to any breach by Company of its obligations under the Standard PPA, any curtailment by the Company or an event or condition of Force Majeure. These changes are important to reduce Seller's risks under the Standard PPA and to facilitate financing.

14. In Section 15.1(D), a cure period of at least 15 days should be added. This provision could be triggered, for example, by a downgrade of the institution providing a letter of credit for the Operating Period Security, and it could take some time for Seller to obtain a letter of credit from a different institution meeting the credit requirements under Section 14.5.

15. Article 16 specifies that in the event of termination due to a Seller Event of Default (other than for failure to achieve Guaranteed In-Service Date), Seller is to pay liquidated damages of contract capacity times $40/kW. This should be amended to reduce the amount of such liquidated damages by five percent each year, so that the liquidated damages decline to zero at the end of the Term, since the value of the Standard PPA to the Company declines as the number of remaining years in the Term declines and the Company would not suffer any damages at the end of the Term due to the fact that the Standard PPA would have terminated in any event at that point. The Standard PPA does not specify any liquidated damages for a Company Event of Default. AES Solar suggests the addition of language specifying that Seller may pursue any available remedies at law or equity in the event of a Company Event of Default.

16. Article 19 allows for assignment to a lender which provides debt financing but limits this to assignment of the rights of Seller. AES Solar suggests that Article 19 be revised to allow for collateral assignment of the Stnadard PPA to a party providing debt financing, which would reflect the traditional scope of such an assignment and would, therefore, facilitate a party's ability to obtain financing. In addition, AES Solar suggests that Article 19 be revised such that the Company agrees to provide consent to collateral assignment or estoppel, in each case, containing terms and conditions that are customary

for transactions of this kind as reasonably requested by a party providing financing in the form of debt or a tax-based equity investment.

17. Article 20 prohibits sales by Seller to third parties. As discussed above, this should be amended to provide for an exception in the event that the Company breaches its obligation to purchase, curtails deliveries or otherwise fails to take all of the energy (including test energy) from the Facility.

18. The definition of Force Majeure in Section 21.1 includes, among other things, "high winds of sufficient strength or duration to materially damage a facility or significantly impair its operation for a period of time longer than normally encountered in similar businesses under comparable circumstances." This language would make a facility with less robust construction, and therefore suffering extensive damage from high wind, qualify for Force Majeure whereas a facility with more robust construction that had less damage from the same wind might not qualify. AES Solar suggests the following rewrite of this language to resolve the problem: "high winds of a higher strength and/or longer duration than normally encountered in similar businesses."

19. Section 21.2 provides certain exclusions from the definition of Force Majeure. While many of these are standard, paragraphs (D) (inability to obtain Permits) and (H) (litigation or administrative or judicial action) are unusual, since these may be matters outside of a party's control. Accordingly, Section 21.2(D) should be amended by adding at the end "unless Seller has made commercially reasonable efforts to obtain such Permits or approvals," and Section 21.2(H) should be amended by adding at the end "unless the Party claiming Force Majeure has made commercially reasonable efforts to

resolve such litigation or administrative or judicial action so as to reduce or limit its impact on such Party's ability to perform."

20. Section 21.5 specifies that events or conditions of Force Majeure defer the liability for Termination Damages for a maximum of 365 days. This provision has a significant flaw in that it does not defer the termination of the Standard PPA itself but rather just defers the payment of the Termination Damages. This is inconsistent with market practice and substantially increases the risks of termination to Seller (which could affect its ability to obtain financing). Accordingly, this provision should be amended to specify that the termination itself, rather than just the liability to make the Termination Payment, shall be deferred during an event or condition of Force Majeure. In addition it should be amended to provide that in the event of a termination resulting from an event or condition of Force Majeure, no Termination Damages shall be payable, since, by definition, any such termination shall not be the fault of the party subject to the event or condition of Force Majeure.

21. The dispute resolution provision in Article 28 requires a Management Meeting and mediation before submitting a claim to binding arbitration. Section 28.2(C) specifies that a notice initiating arbitration shall not be valid or effective to the extent that the claim(s) in such notice would be barred by the applicable statute of limitations or laches. The language should be amended to make it clear that an action by a party to identify a dispute to the other party pursuant to Article 28, including proposing a Management Meeting to discuss this dispute, shall toll the applicable statute of limitations and that the doctrine of laches shall not apply to any period subsequent to such action provided that the party complies with the procedures in Article 28.

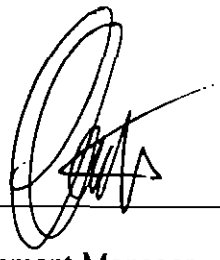
22. Section 30.9 preserves the Company's ability to exercise its rights as specified in the Company's Tariff as filed with the Commission, or as specified in General Order No. 7 of the Commission's Standards for Electric Utility Service in the State of Hawaii. AES Solar suggests adding "or the Seller's" after "the Company's" in this section so as to make the provision reciprocal. AES Solar also notes that utilities in other states have indicated that they may challenge whether a public utility commission may mandate a utility to enter into FIT contracts. In order to provide certainty to sellers under the Standard PPA, which may be important to their ability to obtain financing, this section should be amended by adding language under which the Company waives any right to challenge the validity of the Standard PPA based on any theory, under the Public Utility Regulatory Policies Act of 1978 or otherwise, that the Commission does not have the authority to require the Company to offer to enter into, or enter into, the Standard PPA.

23. AES Solar notes that the Standard PPA does not include any provision regarding transfer of title and risk of loss for the energy from Seller to the Company at the Point of Interconnection. These provisions are standard in power purchase agreements, and accordingly AES Solar suggests the addition of such a provision. Also, as discussed above, the Standard PPA should provide for renegotiation in the event of any change in law that significantly affects a party's ability to perform under the Standard PPA.

III. CONCLUSION

For the reasons set forth above, AES Solar respectfully requests that the Commission require the Companies to amend their proposal in response to AES Solar's comments presented in this filing.

DATED: Honolulu, Hawaii, May 20, 2010.



Corinne Onetto
Project Development Manager
The AES Corporation

On behalf of:
AES Solar Power, LLC

Declaration of Corinne Onetto

CERTIFICATE OF SERVICE

I hereby certify that I have this date filed and served the original and eight copies of the foregoing document in Docket No. 2008-0273, by hand delivery to the Commission at the following address:

CARLITO CALIBOSO, CHAIR
HAWAII PUBLIC UTILITIES COMMISSION
465 S. King Street, Suite 103
Honolulu, HI 96813

I further certify that copies of the foregoing document have been served upon the following parties and participants by causing copies hereof to be mailed by first class mail to each such party as follows:

DEAN NISHINA Executive Director Department of Commerce and Consumer Affairs Division of Consumer Advocacy P.O. Box 541 Honolulu, HI 96809	2 copies First Class Mail
Darcy L. Endo-Moto Vice President Government & Community Affairs Hawaiian Electric Company, Inc. P.O. Box 2750 Honolulu, HI 96840-0001	First Class Mail
Dean Matsuura Director, Regulatory Affairs Hawaiian Electric Company, Inc. P.O. Box 2750 Honolulu, HI 96840-00001	First Class Mail
Jay Ignacio, President Hawaii Electric Light Company, Inc. P.O. Box 1027 Hilo, HI 96721-1027	First Class Mail

Edward L. Reinhardt, President
Maui Electric Company, Ltd.
P.O. Box 398
Kahului, HI 96733-6898

First Class Mail

Rod S. Aoki, Esq.
Alcantar & Kahl LLP
120 Montgomery Street, Suite 2200
San Francisco, CA 94104

First Class Mail

Thomas W. Williams, Jr., Esq.
Peter Y. Kikuta, Esq.
Damon L. Schmidt, Esq.
Goodsill Anderson Quinn & Stifel
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, HI 96813

First Class Mail

Theodore Peck
Department of Business, Economic
Development and Tourism
State Office Tower
235 South Beretania Street, Room 500
Honolulu, HI 96813

First Class Mail

Estrella Seese
Department of Business, Economic
Development and Tourism
State Office Tower
235 South Beretania Street, Room 502
Honolulu, HI 96813

First Class Mail

Mark J. Bennett, Esq.
Deborah Day Emerson, Esq.
Gregg J. Kinkley, Esq.
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

First Class Mail

Carrie K.S. Okinaga, Esq.
Gordon D. Nelson, Esq.
Department of the Corporation Counsel
City and County of Honolulu
530 South King Street, Room 110
Honolulu, HI 96813

First Class Mail

Lincoln S.T. Ashida, Esq.
William V. Brilhante Jr., Esq.
Michael J. Udovic, Esq.
Department of the Corporation Counsel
County of Hawaii
101 Aupuni Street, Suite 325
Hilo, HI 96720

First Class Mail

Henry Q. Curtis
Kat Brady
Life of the Land
76 North King Street, Suite 203
Honolulu, HI 96817

First Class Mail

Carl Freedman
Haiku Design & Analysis
4234 Hana Highway
Haiku, HI 96708

First Class Mail

Warren S. Bollmeier II, President
Hawaii Renewable Energy Alliance
46-040 Konane Place #3816
Kaneohe, HI 96744

First Class Mail

Douglas A. Codiga, Esq.
Schlack Ito Lockwood Piper & Elkind
Topa Financial Center
745 Fort Street, Suite 1500
Honolulu, HI 96813

First Class Mail

Mark Duda, President
Hawaii Solar Energy Association
P.O. Box 37070
Honolulu, HI 96837

First Class Mail

Riley Saito
The Solar Alliance
73-1294 Awakea Street
Kailua-Kona, HI 96740

First Class Mail

Joel K. Matsunaga
Hawaii Bioenergy, LLC
737 Bishop Street, Suite 1860
Pacific Guardian Center, Mauka Tower
Honolulu, HI 96813

First Class Mail

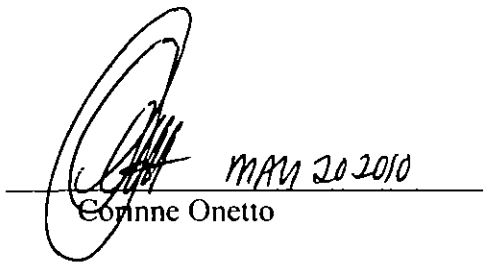
Kent D. Morihara, Esq. Kris N. Nakagawa, Esq. Sandra L. Wilhide, Esq. Morihara Lau & Fong LLP 841 Bishop Street, Suite 400 Honolulu, HI 96813	First Class Mail
Theodore E. Roberts Sempra Generation 101 Ash Street, HQ 12 San Diego, CA 92101	First Class Mail
Clifford Smith Maui Land & Pineapple Company, Inc. P.O. Box 187 Kahului, Hawaii 96733	First Class Mail
Erik Kvam Chief Executive Office Zero Emissions Leasing LLC 2800 Woodlawn Drive, Suite 131 Honolulu, HI 96822	First Class Mail
John N. Rei Sopogy Inc. 2660 Waiwai Loop Honolulu, HI 96819	First Class Mail
Gerald A. Sumida, Esq. Tim Lui-Kwan, Esq. Nathan C. Smith, Esq. Carlsmith Ball LLP ASP Tower, Suite 2200 1001 Bishop Street Honolulu, HI 96813	First Class Mail
Chris Mentzel Chief Executive Officer Clean Energy Maui LLC 619 Kupulau Drive Kihei, HI 96753	First Class Mail
Harlan Y. Kimura, Esq. Central Pacific Plaza 220 South King Street, Suite 1660 Honolulu, HI 96813	First Class Mail

Sandra-Ann Y.H. Wong, Esq. — First Class Mail
Attorney at Law, A Law Corporation
1050 Bishop Street #514
Honolulu, HI 96813

Caroline Belsom — First Class Mail
Vice President/General Counsel
Kapalua Land Company, Ltd.,
A wholly owned subsidiary of Maui Land &
Pineapple Company, Inc.
c/o 200 Village Road
Lahaina, HI 96761

Isaac H. Moriwake — First Class Mail
David L. Henkin
EARTHJUSTICE
223 South King Street, Suite 400
Honolulu, HI 96813-4501

DATED: Honolulu, Hawaii, May 20, 2010



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DECLARATION OF CORINNE ONETTO

1. I am a Project Manager within AES Solar Power, LLC ("AES Solar") and responsible for project development in Hawaii. AES Solar is a $1 billion joint venture of The AES Corporation ("AES") and Riverstone Holdings LLC. AES Solar owns and operates a growing fleet of solar photovoltaic projects in Europe and has a robust pipeline of projects in countries offering incentives to renewable energy producers. Specifically, AES Solar has commenced commercial operation of 32 MW of solar projects in Spain, has 57 MW under construction in Italy, Greece and France, and has development potential in Bulgaria, India and the United States (mainland and in Hawaii). As a Project Manager of AES Solar, I have extensive experience in global solar energy markets, including markets in the United States.

2. Prior to joining AES Solar, I served as Development Analyst in AES's Business Development Group. In this capacity, I worked on various projects across different renewable energy technologies, including hydroelectric and geothermal projects. Additionally, I was responsible for preparing strategic research reports on fuel,

technology and market trends for the leadership of AES. Before joining the Business Development Group, I worked for AES's Corporate Strategy Group and was charged with analyzing political risk and reporting on industry investment. I have earned a Master of Arts in Law and Diplomacy in International Affairs and Energy from the Fletcher School at Tufts University in Boston and a Bachelors of Arts in International Relations from Mount Holyoke College.

3. As an example of AES Solar's work and experience, we recently achieved financial closing on a 43 MW solar photovoltaic project in Italy. A total of five banks participated in this long-term project financing of approximately €173 million. Construction on the project is underway, and the project is expected to reach commercial operation by the end of 2010, qualifying it for a 20-year regulated feed-in tariff ("FIT"). It is with this experience regarding (i) the solar energy markets, (ii) obtaining project financing within these market and (iii) FITs, that I submit this Declaration in this proceeding.

4. I reviewed the AES Solar Comments on the Hawaiian Electric Companies' Schedule FIT Tier 3 Tariffs and Agreement (the "AES Solar Comments") submitted concurrently in this proceeding and agree with the AES Solar Comments in their entirety. The objective of the AES Solar Comments is to request that the Commission direct Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited (each, a "Company" and collectively, the "Companies") to make certain changes to their proposed Schedule FIT Tier 3 Tariff Sheets and standard Schedule FIT Tier 3 Power Purchase Agreement ("Standard PPA") to reduce the risks to solar project developers seeking to participate in the Companies'

FIT programs and facilitate financing of these developers' projects.

5. The purpose of this Declaration is to substantiate several key points made in the AES Solar Comments regarding elements of the proposed Standard PPA that could have an adverse impact on the ability of an entity, such as AES Solar, to obtain project financing. Renewable energy project developers, like AES Solar, must be able to obtain project financing at attractive rates in order to construct the renewable energy generation necessary to assist the State of Hawaii in its goal of reducing its fossil fuel dependence and encouraging the addition of new, clean resources in the state. Before agreeing to provide debt and/or equity financing to a project, lenders perform a complete and thorough evaluation of key project documents, and one of the most important of these is the power purchase agreement ("PPA") under which the project developer will sell the output from the project. Lenders look for any risk factors that may result in cash flows being less predictable or interruptible.

6. The output of solar photovoltaic units typically degrades over time. Therefore, PPAs generally provide that any annual output guarantee declines over time to reflect such degradation. Accordingly, the AES Solar Comments proposes that the Standard PPA provide for this.

7. The definition of Environmental Credits in the Standard PPA is inconsistent with standard market practice. To bring the definition into conformity with industry norms, it should be revised as proposed in the AES Solar Comments to make it clear that any of a broad range of tax credits and any grants that a project may receive would not be considered to be an Environmental Credit that would be transferred to the Company. Many investors in renewable energy projects make upfront financial

investments in these projects based on an assumption that they will received a share of these tax-related benefits and grants (or that they would support project revenues important to provide a return to investors). These investors would be concerned about any provisions in the Standard PPA that raises uncertainty about whether another party may be entitled to these benefits and grants.

8. Equity financing is common in renewable energy deals, in particular because of federal tax credits available to entities meeting certain requirements under the Internal Revenue Code. Accordingly, any definition of Financing Documents used in the Standard PPA should be broad enough to include equity financing.

9. The definition of In-Service Date in the Standard PPA is inconsistent with market practice in that it requires that all generation equipment be completed. The Companies should be directed to amend the definition of In-Service Date to so that a substantially complete project (e.g., 90 percent complete) will be considered to have achieved the In-Service Date. Without this change, the Seller bears the risk that the Standard PPA could be terminated due to a relatively minor problem with respect to completion of the Facility. Such a risk may impair the ability of the Seller to obtain outside financing.

10. To reduce risks and facilitate financing, it is important that the project maintains its interconnection rights and gains the ability to sell to third parties in the event of any termination of its Standard PPA with the Company. Under the Standard PPA, Article 12 sets forth the term of the Standard PPA and certain rights of the parties to terminate it. However, Article 12 is not clear about what happens if the Standard PPA is terminated or if the Company decides not to exercise its rights to purchase the output

from the facility during an extended term. Accordingly, the Standard PPA should be amended to include provisions specifying that the Seller may sell to any other person after the expiration or termination of the Standard PPA and that the interconnection provisions contained in the Standard PPA survive such expiration or termination. These clarifications are important to ensure that the facility is not stranded in the event of a termination of the Standard PPA. These changes will reduce Seller's risks and facilitate obtaining outside financing.

11. Curtailment and termination provisions are particularly important in assessing risks to developers. Accordingly, as pointed out in the AES Solar Comments, any ambiguity in these provisions should be corrected. For example, it should be clear in the provisions of Article 8 related to curtailment how curtailment is allocated among similarly situated projects. In addition, the termination provisions and event of default provisions should clearly reference the applicable cure/grace periods.

12. It is standard practice for renewable energy PPAs to provide for a day-for-day extension in the Guaranteed In-Service Date to the extent that any delay in achieving this date is attributable to any action or inaction by the purchaser. Therefore, Section 13.3 of the Standard PPA, which relates to the Guaranteed In-Service Date, should be amended to provide for a day-for-day extension of the Guaranteed In-Service to the extent that any delay in achieving this date is attributable to any action or inaction by the Company. This is important because Seller will be dependent on the Company for certain actions necessary in order to achieve the Guaranteed In-Service Date, such as for interconnection of the project, and Seller should not be penalized for any delays caused by the Company.

13. I support the AES Solar Comments with respect to Section 15.1(B) and 15.1(C) of the Standard PPA. Section 15.1(B) should be amended to add that Seller's failure to provide energy to the Company during any consecutive 365-day period is excused not only by the Company's inability to accept such energy but also by the Company's breach of its obligations under the Standard PPA, curtailment by the Company, and any event or condition of force majeure. Similarly, Section 15.1(C) should specify that the calculation of whether Seller has delivered 60 percent of the Annual Contract Energy shall count as delivered energy any energy not delivered due to any breach by Company of its obligations under the Standard PPA, any curtailment by the Company or an event or condition of force majeure. The changes requested in the AES Solar Comments will serve to make these provisions conform to what I have encountered in standard, reasonable PPAs, and these changes are important to reduce Seller's risks under the Standard PPA and to facilitate financing.

14. As pointed out in the AES Solar Comments, Article 19 allows for assignment to a lender which provides debt financing but limits this to assignment of the rights of Seller. Article 19 should be revised to allow for collateral assignment of the Standard PPA to a party providing debt financing, which would reflect the traditional scope of such an assignment and would, therefore, facilitate a party's ability to obtain financing. Article 19 also should be revised such that the Company agrees to provide consent to collateral assignment or estoppel, in each case, containing terms and conditions that are customary for transactions of this kind as reasonably requested by a party providing financing in the form of debt or a tax-based equity investment. These

changes would help to conform the assignment provisions in the Standard PPA to the types of assignment provisions that typically are required for renewable energy financing.

15. The Force Majeure exclusions in Section 21.2 include two elements that are not standard in renewable energy PPAs, namely paragraphs (D) (inability to obtain Permits) and (H) (litigation or administrative or judicial action). Since these may be matters outside of a party's control, each of these exclusions should be amended to provide that they would not apply in the event that Seller has made made commercially reasonable efforts to resolve them. Otherwise, the Seller is left with an unreasonable risk that it could be subject to default for conditions outside its control despite its efforts to overcome such conditions. The provision in Section 21.5 specifying that events or conditions of Force Majeure defer the liability for Termination Damages for a maximum of 365 days also is not a typical provision in renewable energy PPAs. This provision has a significant flaw in that it does not defer the termination of the Standard PPA itself but rather just defers the payment of the Termination Damages. This is inconsistent with market practice and substantially increases the risks of termination to Seller (which could affect its ability to obtain financing). Accordingly, as proposed in the AES Solar Comments, this provision should be amended to specify that the termination itself, rather than just the liability to make the Termination Payment, shall be deferred during an event or condition of Force Majeure. In addition it should be amended to provide that in the event of a termination resulting from an event or condition of Force Majeure, no Termination Damages shall be payable, since, by definition, any such termination shall not be the fault of the party subject to the event or condition of Force Majeure.

16. Finally, the Standard PPA fails to include a provision that is typically included in renewable energy PPAs regarding transfer of title and risk of loss for the energy from Seller to the Company at the Point of Interconnection. AES Solar suggests the addition of such a provision to conform to industry norms. Also, it is not unusual for renewable energy PPAs to provide for renegotiation in the event of any change in law that significantly affects a party's ability to perform under the Standard PPA. Accordingly, I support the proposal in the AES Solar Comments to add such provision, as it can help to reduce risks to both parties.

I declare under penalty of perjury under the laws of the United States of America that the factual statements in the foregoing are true and correct to the best of my knowledge and belief.

DATED: May 20, 2010.

Corinne Onetto